



Department of State

TELEGRAM

432

LIMITED OFFICIAL USE

AN: D790395-0012

LIMITED OFFICIAL USE

PAGE 01 STATE 227464
ORIGIN L-03

INFO OCT-00 EA-10 ADS-00 EB-08 COME-00 TRSE-00 JUSE-00
SIL-01 LAB-04 CIAE-00 INR-10 NSAE-00 INC-01 /037.R

DRAFTED BY L/EB:KSGUDGEON:ER
APPROVED BY L/EB:PKWILLIS
EA/EP:JGREGORY
EB/IFD/OIA:RKAUZLARICH
EA/J:MDewITT

-----013438 292218Z /64
P 292121Z AUG 79
FM SECSTATE WASHDC
TO AMEMBASSY TOKYO PRIORITY

LIMITED OFFICIAL USE STATE 227464

E.O. 12065 N/A

TAGS: ETRD, PGOV, EINV

SUBJECT: FOREIGN MINISTRY INTEREST IN DISCRIMINATION CASE,
LISA M. AVIGLIANO, ET AL., AGAINST SUMITOMO SHOJI AMERICA,
INC.

REF: (A) TOKYO 15234. (B) TOKYO 13800

1. FIRST SECRETARY NANA O OF JAPANESE EMBASSY REQUESTED
APPOINTMENT WITH DEPARTMENT LEGAL OFFICERS AUGUST 16 TO
RAISE SAME QUESTIONS POSED PARA 5 REF B. HIS REPORT BACK
TO TOKYO SHOULD HAVE BEEN RECEIVED BY NOW, AND SHOULD HELP
TO CLARIFY OUR VIEWS. DEPARTMENT WILL PROVIDE EMBASSY WITH
MORE DETAILED TALKING POINTS ON THIS ISSUE AS SOON AS
POSSIBLE.

2. DEPARTMENT REITERATED TO NANA O VIEW SET FORTH IN MARKS
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 02 STATE 227464

LETTER THAT FCN COVERS INVESTMENT THROUGH HOST COUNTRY-

LIMITED OFFICIAL USE

DEPARTMENT OF STATE A/CDC/MR	
REVIEWED BY <u>W. Dell</u>	DATE <u>9-30-82</u>
RDS ☐ or XDS ☐ EXT. DATE	
TS AUTH. _____	REASON(S) _____
ENDORSE EXISTING MARKINGS ☐	
DECLASSIFIED ☐ RELEASEABLE ☒	
RELEASE DENIED ☐	
FBI FOR EXEMPTIONS	

LIMITED OFFICIAL USE

INCORPORATED SUBSIDIARIES AS WELL AS OTHER FORMS. DEPARTMENT OPINION IS BASED ON LANGUAGE OF TREATY ITSELF, WHICH CLEARLY SHOWS INTENT TO COVER SUCH SUBSIDIARIES (E.G., ARTICLE I(1) TREATY INVESTOR STATUS AND, MOST IMPORTANTLY, BROAD DEFINITION OF RIGHTS OF NATIONAL TREATMENT AND ESTABLISHMENT AT ARTICLE VII(1) WHICH AFFECTS INTERPRETATION OF OTHER ARTICLES, ALTHOUGH LANGUAGE OF EACH SPECIFIC PROVISION OF TREATY MUST BE EXAMINED SINCE DRAFTING AND INTENT DO VARY AND A FEW PROVISIONS EXCLUDE SUBSIDIARY COVERAGE.); ON DISTINCTION BETWEEN ISSUE OF TREATY COVERAGE OF SUCH SUBSIDIARIES (WHICH ON ITS FACE THE TREATY DOES) AND THAT OF THE NATIONALITY OF SUCH SUBSIDIARIES, AS DEFINED UNDER ARTICLE XXII(3) (THERE IS ABSOLUTELY NO CONTRADICTION BETWEEN TREATY COVERAGE AND RECOGNITION OF HOST COUNTRY NATIONALITY OF CORPORATIONS THEREIN INCORPORATED); AND ON POLICY GROUNDS, SINCE EXCLUSION OF INVESTMENT THROUGH LOCALLY-INCORPORATED SUBSIDIARIES WOULD GUT JAPANESE FCN OF MOST OF ITS VALUE IN INVESTMENT AREA, WITH ADVERSE IMPLICATIONS FOR ALL OUR OTHER FCN'S WHICH EMPLOY SIMILAR STRUCTURE AND TERMINOLOGY.

3. DEPARTMENTSOMEWHAT SURPRISED THAT, ALTHOUGH NOT COMMITTING ITSELF TO AN OPPOSING VIEW, FOREIGN MINISTRY SHOULD QUESTION THIS POINT, PARTICULARLY SINCE BOTH SUMITOMO AND ITOH HAVEARGUEDFOR TREATY COVERAGE. (FYI: ACCEPTANCE OF DEPARTMENT INTERPRETATION OF FCN SUBSIDIARY COVERAGE DOES NOT DECIDE OUTCOME OF CIVIL RIGHTS LITIGATION IN WHICH SUMITOMO AND ITOH FIND THEMSELVES. DEPARTMENT WILL POUCH MARKS LETTER TO EMBASSY; WE ARE WEIGHING TAKING FURTHER STEPS IN THIS LITIGATION TO CLARIFY OUR VIEWS END FYI). IN OUR EFFORTS TO REFINE OUR POSITION HERE WE WOULD WELCOME EMBASSY ASSISTANCE ON FOLLOWING:
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 03

STATE 227464

HAVE JAPANESE COURTS, GOJ EVER CONSTRUED FCN, OR SIMILAR BILATERAL TREATY, WITH RESPECT TO SUBSIDIARY COVERAGE? HOW DO OTHER FCN'S TO WHICH JAPAN IS A PARTY DEAL WITH THIS ISSUE? NOTE THAT JAPAN-EGYPT BILATERAL INVESTMENT TREATY (BIT) OF 1978 FOLLOWS EUROPEAN BIT MODELS WITH BROAD DEFINITION OF COVERED INVESTMENT, INCLUDING INVESTMENT ACCOMPLISHED THROUGH HOST COUNTRY SUBSIDIARIES, WHILE AT THE SAME TIME RECOGNIZING THAT NATIONALITY OF SUCH SUBSIDIARIES IS THAT OF COUNTRY OF INCORPORATION AND HQ. (ARTICLE I(1) AND (4)).

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

4. WE BELIEVE BROAD INTERPRETATION PARAGRAPH 2 SERVES BOTH US AND JAPANESE INTERESTS, AND IS CONSISTENT WITH GOJ POLICY AS REFLECTED IN BIT WITH EGYPT AND OECD PRACTICE. WE WOULD BE INTERESTED IN EMBASSY VIEWS ON ANY FACTORS WHICH MIGHT CAUSE GOJ TO FAVOR A NARROWER READING. VANCE

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE